

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ERNEST W. HINSON, JR.,

CIVIL NUMBER:

Plaintiff,

3:18-cv-00870-BRM-LHG

vs.

TRIAL (VOLUME II)

UNITED STATES OF AMERICA,

Pages 160 - 240

Defendant.

Frank R. Lautenberg
United States Post Office and Courthouse
2 Federal Square 07101
Wednesday, October 30, 2019
Commencing at 9:09 a.m.

B E F O R E:

THE HONORABLE BRIAN R. MARTINOTTI,
UNITED STATES DISTRICT JUDGE

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1 (PROCEEDINGS held in open court before The Honorable
2 BRIAN R. MARTINOTTI, United States District Judge, at
3 9:09 a.m.)

4 THE COURT: Good morning, counsel.

5 MR. BUCHSBAUM: Good morning, Judge.

6 MR. JOSEPH: Good morning.

7 THE COURT: We are on day two of our trial.
8 Appearances for the record, please.

9 MR. BUCHSBAUM: Good morning. Andrew Buchsbaum,
10 Friedman, James & Buchsbaum, for the plaintiff, Ernest W.
11 Hinson, Junior.

12 MR. FRIEDMAN: Bernard Friedman, Friedman, James &
13 Buchsbaum, for the plaintiff as well, Your Honor.

14 MR. JOSEPH: Joshua Joseph for the United States of
15 America.

16 MR. BROWN: And Thomas Brown for the United States.
17 Good morning, Your Honor.

18 THE COURT: You are here, you may as well get on the
19 transcript.

20 MS. CROSBY: Good morning, Your Honor. Trina Crosby
21 with the United States.

22 MS. EISDORFER: I am Olive Eisdorfer, for the United
23 States also.

24 THE COURT: Welcome. Thank you.

25 You may be seated.

1 Counsel, I understand there are some housekeeping
2 issues that need to be addressed prior to proceeding today.

3 MR. BUCHSBAUM: Yes, Your Honor. I would like to
4 move some exhibits into evidence, starting with plaintiff's,
5 P-3, which is now up on the screen.

6 MR. BROWN: The United States would object to this
7 exhibit, Your Honor. It shows by its own label "corrective
8 action taken," so it should be excluded as a remedial measure.

9 MR. BUCHSBAUM: Your Honor, we can redact "corrective
10 action taken," but the photograph and the yellow paint has
11 been referred to extensively in testimony and in other
12 exhibits, which are already in evidence; specifically P-4,
13 which was the expert report from defendant's expert which had
14 the side-by-side photos of the Antares and the Denebola, both
15 painted yellow, which are in evidence for all purposes.

16 THE COURT: What's the purpose of this photo coming
17 into evidence, other than to show a subsequent remedial
18 measure or -- I mean, there is no dispute about ownership,
19 control. So what -- under 407, what's the purpose of this?

20 MR. BUCHSBAUM: Feasibility, Your Honor. It's
21 entirely feasible to, and there is no --

22 THE COURT: Is one of your arguments going to be --
23 and if it was in the papers I missed it. Was it in the
24 papers?

25 MR. BUCHSBAUM: What?

1 THE COURT: That you are claiming that this could
2 have been done as an exception to 407 to show that it was
3 feasible to do this?

4 MR. BUCHSBAUM: I believe it's in your pretrial
5 memorandum, Your Honor.

6 THE COURT: Is it? Okay. I missed it.

7 MR. BROWN: Your Honor, I am -- I also missed this.
8 But it's not disputed that it's feasible to paint this sill --

9 THE COURT: Right.

10 MR. BROWN: -- yellow, pink, green or a variety of
11 other colors. And I further add, Your Honor, that this
12 exhibit is unnecessarily cumulative. Exhibits 1 and 2 show
13 both sides of that sill as it was painted at the time of
14 accident.

15 THE COURT: So I am going to reserve on the
16 admissibility of this photo at this time and will permit you,
17 if you want, since we do have a gap, to argue that it should
18 come in and the Court should consider this scheme under
19 feasibility under 407.

20 I didn't see it in your papers. I apologize if I
21 missed it.

22 But, defense counsel, you didn't notice it either?

23 MR. BROWN: I did not, Your Honor.

24 MR. JOSEPH: No.

25 MR. BROWN: And again, it's not controverted that

1 painting this sill another color is feasible.

2 THE COURT: Right.

3 MR. BROWN: So there is no dispute there.

4 THE COURT: So we will reserve. What exhibit number
5 is this?

6 MR. BUCHSBAUM: That is P-3.

7 THE COURT: P-3 is reserved. Okay.

8 Any other objections to any evidence?

9 MR. BUCHSBAUM: Hopefully not, Your Honor.

10 THE COURT: Okay.

11 MR. BUCHSBAUM: I will just list them.

12 THE COURT: Okay.

13 MR. BUCHSBAUM: P-4 is an evidence list.

14 MR. BROWN: No objection.

15 THE COURT: Okay.

16 THE DEPUTY CLERK: It's in already.

17 MR. BUCHSBAUM: P-6.

18 MR. BROWN: Excuse me, Mr. Buchsbaum, I think you
19 misspoke. You said P-4. Did you mean P-5?

20 MR. BUCHSBAUM: I'm sorry, P-5.

21 THE COURT: Okay.

22 MR. BUCHSBAUM: P-6 is a photograph of Mr. Hinson's
23 injured arm.

24 MR. BROWN: No objection.

25 MR. BUCHSBAUM: P-9, serious injury illness report

1 package.

2 MR. BROWN: No objection.

3 MR. BUCHSBAUM: P-10, a seafarer data sheet.

4 MR. BROWN: No objection.

5 MR. BUCHSBAUM: P-26 is plaintiff's union pension
6 records.

7 MR. BROWN: No objection.

8 MR. BUCHSBAUM: P-28 is plaintiff's payroll register
9 sheets.

10 MR. BROWN: No objection.

11 MR. BUCHSBAUM: P-29 is plaintiff's duty day
12 tabulations.

13 MR. BROWN: No objection.

14 MR. BUCHSBAUM: P-30 is plaintiff's merchant mariner
15 service record received from the U.S. Coast Guard.

16 MR. BROWN: No objection.

17 MR. BUCHSBAUM: And as we will hear today, P-32 is
18 Dr. Stein's report. He is the next witness.

19 MR. BROWN: Your Honor, just a brief comment on
20 expert reports. I know they are not normally admissible. We
21 understand this is a bench trial and Your Honor has had the
22 opportunity to review them, so in that context we are not
23 concerned with their admissibility here for the purpose of
24 familiarizing the Judge with the case.

25 THE COURT: It was interesting because you did not

1 object yesterday to the liability expert.

2 MR. BROWN: Yes, Your Honor, and I was prepared and I
3 knew at that time that I was going to use that exhibit to
4 impeach the witness, which I did.

5 THE COURT: Okay.

6 MR. BUCHSBAUM: And P-33 will be the report of
7 Kristin Kucsma, K-U-C-S-M-A, who will be the second witness
8 today.

9 MR. BROWN: And same comments about the reports, no
10 objection, with that said.

11 THE COURT: So noted.

12 (Exhibit Number P-5 is received in evidence.)

13 (Exhibit Number P-6 is received in evidence.)

14 (Exhibit Number P-9 is received in evidence.)

15 (Exhibit Number P-10 is received in evidence.)

16 (Exhibit Number P-26 is received in evidence.)

17 (Exhibit Number P-28 is received in evidence.)

18 (Exhibit Number P-29 is received in evidence.)

19 (Exhibit Number P-30 is received in evidence.)

20 (Exhibit Number P-32 is received in evidence.)

21 (Exhibit Number P-33 is received in evidence.)

22 THE COURT: Ready to proceed?

23 MR. BUCHSBAUM: Yes.

24 THE COURT: Okay.

25 MR. BUCHSBAUM: Plaintiff calls Dr. David Stein.

1 DR. DAVID STEIN, PLAINTIFF'S WITNESS,
2 having been duly sworn, testifies as follows:
3 THE COURT: Good morning, doctor.
4 THE WITNESS: Good morning, Your Honor.
5 THE DEPUTY CLERK: State your name.
6 THE WITNESS: David, middle initial B as in boy, last
7 name Stein, S-T-E-I-N.
8 THE COURT: Okay.
9 Counsel.
10 DIRECT EXAMINATION
11 BY MR. BUCHSBAUM:
12 Q. Good morning, Dr. Stein.
13 A. Good morning.
14 Q. What is your profession?
15 A. I am a vocational rehabilitation counselor evaluator. I
16 am also a professional life care planner.
17 Q. And for how long have you been doing that type of work?
18 A. Since 1973.
19 Q. What does a vocational rehabilitation counselor do?
20 A. Well, we do many things. The essential role of a rehab
21 counselor is to evaluate and assist individuals with
22 medically-defined disabilities that represent the handicap or
23 an impairment to employment and to assist them in the
24 vocational rehabilitation process when that is possible.
25 Q. Very briefly, your employment background?

1 A. Since 1977, I have been self employed as a vocational
2 rehabilitation counselor. Prior to that I had worked,
3 initially post master's degree, at the The Helen Keller
4 National Center for the Deaf-Blind and at the North Shore
5 University Hospital in Long Island in the vocational
6 rehabilitation unit, and served as a vocational rehab
7 counselor in those two employments.

8 Q. Very briefly, your educational background?

9 A. I hold a bachelor of arts degree from the College of
10 Emporia, which I earned in 1970, with a major in -- double
11 major in history and psychology.

12 I earned a master of science in vocational
13 rehabilitation counseling from what is today Emporia State
14 University, what was then Kansas State Teachers College, in
15 1973.

16 In 1986, I earned a nontraditional doctoral degree at
17 Columbia Pacific University. I have done postgraduate study
18 at NYU in deafness rehabilitation counseling and at Walden
19 University in counseling-related field as well.

20 Q. Do you hold any licenses or certifications?

21 A. Yes, I do.

22 Q. Please let the Court know, briefly.

23 A. I am licensed by the State of New Jersey as a
24 rehabilitation counselor. I am board certified by the
25 Commission on Rehabilitation Counselor Certification as a

1 certified rehabilitation counselor.

2 I am also certified as a disability management
3 specialist. And I am a certified life care planner.

4 MR. BUCHSBAUM: Your Honor, I would tender Dr. Stein
5 as an expert in vocational rehabilitation.

6 THE COURT: Any questions as to qualifications?

7 MR. BROWN: No.

8 MR. JOSEPH: No objection, Your Honor.

9 THE COURT: Dr. Stein will be so recognized and may
10 render opinions in his field.

11 THE WITNESS: Thank you.

12 BY MR. BUCHSBAUM:

13 Q. Dr. Stein, you testify in court quite frequently,
14 correct?

15 A. Yes.

16 Q. Do you testify more for plaintiffs or for defendants?

17 A. I can't answer that question authoritatively. I do a lot
18 of cases, very few of them actually go to trial, and I don't
19 have that information available to me as to who I -- what
20 cases I testified on and whether it was plaintiff or defendant
21 who had employed my services.

22 Q. All right.

23 At our request, did you conduct an interview of
24 Mr. Hinson?

25 A. Yes.

1 Q. When was that?

2 A. That was November 16th of last year, 2018.

3 Q. And prior to meeting with Mr. Hinson, did our office
4 provide you with certain documents for review?

5 A. Yes.

6 Q. And you reviewed those documents and they are referenced
7 in your report, correct?

8 A. That's correct.

9 Q. Briefly, what documents were you provided?

10 A. I was provided, and I am just going to look through my
11 file here.

12 I was provided with reports of defendant's vocational
13 expert. And I was provided primarily with medical reports, as
14 well as some -- just the injury reports and the notice of
15 accident from the employer and medical reports primarily.

16 Q. All right. And I am directing you to Page 4 of your
17 report.

18 Did you develop background information regarding
19 Mr. Hinson's educational background and employment history and
20 current physical status?

21 A. Yes.

22 Q. Please explain.

23 A. I interviewed Mr. Hinson during -- as I said, on the
24 16th of November of 2018. And the purpose of the interview
25 was to obtain relevant -- vocationally relevant information

1 with regard to his age, his education, and his past relevant
2 employment experience, as well as his personal opinions as to
3 his injury and limitations.

4 Q. And what were those results?

5 A. Mr. Hinson completed the tenth grade and later got a high
6 school diploma. I think it was 2009, about, is what he
7 indicated.

8 He had job-specific training at the American Maritime
9 Officers union for his Coast Guard certifications and
10 licenses. And he also indicated having training at the
11 Military Sealift Command in Euclid, Ohio, and the National
12 Maritime union in New York, back in the '70s and '80s.

13 Q. Was Mr. Hinson's age significant in terms of your
14 evaluation?

15 A. Yes.

16 Q. Why?

17 A. He is of advanced age vocationally, which by the Social
18 Security Administration guideline is age 55 and over.

19 By their definition, that's the age at which making,
20 in their words, a, quote-unquote, significant vocational
21 adjustment or changing careers is less likely and unreasonable
22 to expect as the person is nearing their retirement age.

23 Q. Did you review any cognitive testing that was performed
24 by defendant's expert, Wollstein? That's W-O-L-L-S-T-E-I-N.

25 A. Dr. Wollstein's report was a vocational report in terms

1 of cognitive abilities he just gave.

2 Q. I am going to pull it up on the screen and ask if this is
3 what you reviewed?

4 A. Yes.

5 Q. And what is the name of the test that Dr. Wollstein
6 administered to Mr. Hinson?

7 A. The Wide Range Achievement Test, the fourth revision.

8 Q. What is that?

9 A. It's a basic skills test. It measures reading ability,
10 spelling, arithmetic, basic skills.

11 Q. And can you explain to us and the Court the results of
12 the Wide Range Achievement Test that was administered by
13 Dr. Wollstein?

14 A. It indicates that Mr. Hinson scored very low on this
15 test. His reading level is at -- in terms of the percentile,
16 it's at the seventh percentile. His grade score is at the 5.4
17 grade reading level.

18 Sentence comprehension was at the 16th percentile, at
19 the 7.4 grade level.

20 Spelling, 12th percentile, the 5.1 grade level.

21 And math computation was at the 18th percentile, a
22 4.5 grade level.

23 Reading composite was at the eighth percentile and
24 negligible grade score. Very low scores.

25 Q. How would those scores impact, if at all, Mr. Hinson's

1 employability or alternate employability?

2 A. Well, his ability to be trained for another job,
3 especially if it's technical training requiring any academic
4 or basic skills for reading and comprehension, would be very
5 limited for him. It would be contraindicated based on this --
6 based on these test scores.

7 Q. As far as Mr. Hinson's employment history prior to his
8 accident, what was that?

9 A. He spent his entire employment career as an engineer and
10 as a second assistant engineer and aboard ships since 1977.
11 Past relevant work history in terms of useful skills goes back
12 a maximum of 15 years.

13 So this is his employment history. This is all he
14 has ever done.

15 Q. Did you review any medical records which may have placed
16 any limitations on his physical abilities?

17 A. Yes.

18 Q. Please explain.

19 A. Dr. Sclafani limited him to a ten-pound weight lifting
20 restriction with his right dominant arm. And that limited him
21 to basically a range of sedentary to some light work in terms
22 of light work that doesn't require lifting greater than ten
23 pounds.

24 Q. Did you also review a medical report from defendant's
25 orthopedist, Dr. Bills?

1 A. Yes.

2 Q. Did Dr. Bills' report, as far as lifting, differ in any
3 way from Dr. Sclafani's report?

4 A. Yes.

5 Q. How so?

6 A. Dr. Bills indicated Mr. Hinson could lift up to
7 100 pounds.

8 Q. Okay.

9 A. And placed restrictions only on his use of the right arm
10 for using tools such as wrenches.

11 Q. Did you rely on Dr. Bills' lifting restriction of
12 100 pounds or Dr. Sclafani's lifting restriction of ten
13 pounds?

14 A. I relied more on Dr. Sclafani as the treating physician
15 and the one who has -- was the surgeon who has treated
16 Mr. Hinson since his injury. And whereas, Dr. Bills did only
17 a one-time evaluation, which Mr. Hinson indicated lasted
18 15 minutes.

19 Q. How would -- strike.

20 Dr. Bills placed a restriction on Mr. Hinson's use of
21 wrenches, correct?

22 A. Yes.

23 Q. How would that impact his future employability?

24 A. Well, his job, one of the essential functions is to use
25 hand tools and power tools, so it would affect his ability to

1 do his job, which Dr. Sclafani said he could no longer do.

2 Q. Did you prepare something called a preinjury vocational
3 profile?

4 A. Yes.

5 Q. What is that?

6 A. I utilized the U.S. Department of Labor's worker trait
7 factor system, which is the accepted methodology in measuring
8 an individual's capacity against the requirements of different
9 occupations to see where those two intersect.

10 So I researched the occupation that Mr. Hinson had
11 done during his past relevant employment career to determine
12 the quantitative requirements for that occupation.

13 Q. And is there something called the dictionary of
14 occupational terms which categorizes various jobs?

15 A. It's the Dictionary of Occupational Titles.

16 Q. Titles.

17 A. And it is -- in my profession it's as important as the
18 Rules of Civil Procedure would be in yours. It is basically
19 the Bible. It tells us a lot about over -- almost 13,000
20 occupations in the national economy, including the occupation
21 Mr. Hinson did.

22 Q. Did you come up with a job definition for the employment
23 which Mr. Hinson was engaged in at the time of his incident?

24 A. Yes.

25 Q. And I have placed it up on the screen.

1 Is that the job definition for Mr. Hinson's job?

2 A. Yes, that's the generic description from the Dictionary
3 of Occupational Titles that you've got up there.

4 Q. And does that definition include the use of tools?

5 A. Yes. It indicates right in repairs, machinery using hand
6 tools and power tools.

7 Q. And that's -- what is the DOT code there?

8 A. The Dictionary of Occupational Titles code is
9 197.130-010.

10 Q. And just for the record, this definition is within your
11 report? It's contained within your report?

12 A. Yes.

13 Q. Where exactly in your report, just for reference
14 purposes?

15 A. It's in the addendums. It's under the -- if you look at
16 the second addendum -- bear with me a minute.

17 It says McCroskey, Dictionary of Occupational Titles,
18 work history, job descriptions, and it's contained right
19 there.

20 Q. And is the DOT, the dictionary of occupational terms, is
21 that an --

22 A. Titles.

23 Q. Titles, I'm sorry.

24 The Dictionary of Occupational Titles, is that an
25 accepted reference within the vocational rehabilitation field?

1 A. Yes, it's a standard reference.

2 Q. And it's relied upon by vocational rehabilitation
3 specialists throughout the country?

4 A. Yes.

5 Q. Who puts out the DOT?

6 A. The U.S. Department of Labor.

7 Q. Did you also prepare something known as a post-injury
8 vocational profile?

9 A. Yes.

10 Q. What is that?

11 A. It's basically -- the preinjury vocational profile is
12 adjusted to reflect the functional limitations and residual
13 functional abilities of the individual based on the medical
14 reports and records that I reviewed.

15 Q. And did you come to any conclusions regarding
16 Mr. Hinson's post-injury vocational profile?

17 A. Yes.

18 Q. What were those?

19 A. As I said before, I limited him to a range of sedentary
20 to some light work activity, restricted him from activities
21 involving climbing, balancing, pushing, pulling. His aptitude
22 for bimanual manual dexterity I reduced.

23 And anyone with any kind of impairment is precluded
24 from work environments where there are hazardous conditions
25 that would present a danger to the individual and/or others.

1 And the rest of his preinjury profile I held
2 constant, as those trait factors were not impacted as a result
3 of his injury.

4 Q. What's the definition of "sedentary"?

5 A. Sedentary work is that which involves sitting two-thirds
6 of the day or greater, the workday, and lifting objects
7 weighing -- very light objects weighing no more than ten
8 pounds, such as dockets and ledgers and things of that nature.

9 Q. Did you also prepare an analysis known as McCroskey,
10 M-C-C-R-O-S-K-E-Y, Transferable Skills?

11 A. Yes.

12 Q. What is that?

13 A. The McCroskey system is actually the latest version of
14 the VDARE process. VDARE is an acronym for Vocational
15 Diagnosis and Assessment of Residual Employability. And it
16 employs the U.S. Department of Labor's worker trait system to
17 match an individual and their abilities against the demands of
18 occupations as they exist in the labor market.

19 And it is scientifically valid and reliable, which is
20 why I utilize this methodology in order to compare an
21 individual's pre and post injury capabilities against the
22 demands of work in their local labor market to see where the
23 two meet.

24 Q. And did you come to a conclusion as to Mr. Hinson's
25 ability to get jobs with moderate to high transferable skills?

1 A. There were no -- yes, there were no occupations with
2 moderate to high transferable skills from his prior work
3 history that were within his residual functional capacity to
4 perform and sustain work activity.

5 Q. And what does that mean, jobs with moderate to high
6 transferable skills?

7 A. If a job is, in terms of its relatedness to other
8 occupations.

9 As an example, a paralegal would be related to a
10 lawyer, so would a judge be related to a lawyer. And there
11 might be transferable skills there. There might be additional
12 training needed, but there is at least something there to
13 warrant.

14 If a person is, for example, an automobile mechanic,
15 they might have skills for -- to be an automobile service
16 writer because they have an implicit knowledge of the
17 automobile and what service would be needed to repair it.

18 There is nothing -- other than jobs that have similar
19 physical demands to what he did, that matched -- that had a
20 moderate to high skills transferability.

21 Q. Did you also prepare an analysis of jobs with few, if
22 any, transferable skills/unskilled labor?

23 A. Yes.

24 Q. What were the results of that?

25 A. Mr. Hinson's profile -- post-injury profile matched 61

1 occupations that are among the most frequently hired in his
2 labor market area, Monmouth and surrounding counties in New
3 Jersey. But these are unrelated to the type of work he did
4 previously. They are much lower skilled, or unskilled, and
5 they are much lower paying.

6 Q. Did you include a list of those type of jobs within your
7 report, just examples of them?

8 A. I did a sampling of them. If you will look at the top of
9 Page 13 in my report, it indicates fuel attendant, security
10 guard dispatcher, service dispatcher, shipping order clerk,
11 cashier, laundry clerk, sales clerk. Related clerical and
12 service occupations are what primarily matched his post-injury
13 vocational profile.

14 Q. And, obviously, Mr. Hinson had no prior job experience
15 with any of those professions, correct?

16 A. Correct.

17 Q. What is your understanding or opinion as to whether
18 Mr. Hinson would be able to find employment in those
19 professions that you just mentioned?

20 A. I think it will be more difficult than the average person
21 because of the factors of his age, the fact that he has no
22 prior experience in any of these occupations, which would
23 render him probably -- most probably, if he were able to
24 obtain employment to a job at an entry level, entry point wage
25 for these occupations, which on average was just under \$12 an

1 hour, \$11.77 an hour.

2 Q. Let's just assume for present purposes that Mr. Hinson
3 were able to get one of the jobs that you mentioned. Did you
4 come to a conclusion as to what type of earnings he could
5 expect?

6 A. Yes. As I said, the average entry point wage was \$11.77
7 an hour, which for 2,080 hours per annum would equate to just
8 under \$24,500 in gross annual earnings.

9 Q. You reviewed some of the jobs which Dr. Wollstein
10 suggested that Mr. Hinson could obtain, such as insurance
11 clerk, brokerage clerk.

12 Do you have an opinion as to whether Mr. Hinson would
13 be suitable for those types of jobs?

14 A. Those jobs require reading ability that is well above
15 what he has tested or demonstrated in his prior working
16 career. And given his low level of formal education, I think
17 it would be contraindicated. I don't think he would be
18 successful.

19 Q. What about as a warehouse supervisor or an automobile
20 parts manager?

21 A. Manager or supervisory work is something he has never
22 done. I don't see how he would be hired in either of those
23 positions, especially with no experience as a warehouseman or
24 as an auto mechanic to do service writing management work.
25 Those are very few, and the people that get those jobs have

1 prior experience. And I don't think that's a realistic
2 choice.

3 Q. Is there something known as the New Jersey Division of
4 Vocational Rehabilitation?

5 A. Yes.

6 Q. What is that?

7 A. It's part of the state/federal vocational rehabilitation
8 system. Every state and territory in the United States has a
9 department of vocational rehabilitation. The Federal
10 Government provides 80 percent of the funding. The states
11 match with 20, and run their own individual agencies.

12 In New Jersey, it's the DVR, the Division of
13 Vocational Rehabilitation.

14 Q. Would, in your opinion, Mr. Hinson qualify for -- to
15 receive those types of services?

16 A. That would be a determination they would make. The two
17 fundamental criteria is that the individual have a
18 medically-defined impairment that represents an obstacle to
19 employment, number one.

20 And number two, be an individual who can reasonably
21 be expected to benefit from providing rehabilitation services,
22 usually involving training and job placement assistance. And
23 I don't think he would qualify due to his age because he is so
24 close to retirement.

25 Q. Doctor, based on your review of all the documents you

1 were provided, your interview of Mr. Hinson, do you have an
2 opinion based upon a reasonable degree or probability of
3 vocational certainty as to whether Mr. Hinson would be
4 successful in finding alternate employment?

5 A. As again I said, I think his chances are more difficult
6 because of the factors noted than an average person would
7 have. He will have a difficult time finding alternative
8 employment.

9 Q. Just please summarize what those factors are one more
10 time.

11 A. Again, his age, his lack of education -- formal
12 education, and his limited reading ability, his lack of having
13 any experience in any occupation other than the one he did, I
14 think all mitigate against him being gainfully employed.

15 That's not preclusive. I think he might be able to
16 obtain employment in one of the occupations I indicated, but
17 it will be more difficult than it would be otherwise.

18 MR. BUCHSBAUM: Nothing further, Your Honor.

19 THE COURT: Any cross-examination?

20 MR. JOSEPH: Yes, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. JOSEPH:

23 Q. Good morning, Dr. Stein.

24 A. Good morning.

25 Q. My name is Josh Joseph. And as you know, I represent the

1 United States in this action.

2 You testified just now that you reduced Mr. Hinson's
3 bimanual dexterity. Is that correct?

4 A. That was part of it, yes.

5 Q. Can you explain to me what bimanual dexterity means?

6 A. Using both hands in the performance of work activity,
7 bimanual dexterity, coordination.

8 Q. Okay.

9 So that involves -- so you reduce his abilities in
10 both hands, correct?

11 A. I reduced his ability to work with both hands based on
12 the impairment of one, which affects both.

13 Q. Okay.

14 And, Dr. Stein, you determined -- I think you just
15 testified that you determined Hinson's functional capacity to
16 do certain jobs. Is that accurate?

17 A. I didn't make the determinations. I went by the medical
18 reports in order to obtain that information.

19 Q. Okay.

20 And you based your ten-pound lifting restriction on
21 the medical reports of Dr. Sclafani, correct?

22 A. Sclafani, yes.

23 Q. Sclafani.

24 You did not base them -- you do not base the lifting
25 restriction on anything else. Is that accurate?

1 A. That's correct.

2 Q. Your opinion is that Hinson is unemployable, correct?

3 A. No, that's not what I said.

4 Q. Okay. Tell me what you said then.

5 A. My report indicates there are 61 occupations that match
6 his post-injury vocational profile that indicates he has the
7 capacity to do those jobs.

8 Q. Okay.

9 A. I indicated that it would be more difficult than average
10 for him to obtain employment in those jobs, but I did not
11 preclude him.

12 Q. Okay.

13 And you didn't interview Hinson. Is that accurate?

14 A. Yes.

15 Q. You are aware that he has over 35 years of seaman
16 experience?

17 A. Yes.

18 Q. You know he worked his way up the ranks?

19 A. That's correct.

20 Q. Started off as a third engineer?

21 A. That's correct.

22 Q. Became a second engineer?

23 A. Yes.

24 Q. First engineer?

25 A. Yes.

1 Q. Chief engineer?

2 A. Yes.

3 Q. Do you know the chief engineer is the highest rank in the
4 engineering department?

5 A. Yes.

6 Q. Do you know you have to pass an exam at each level to
7 become the next level of engineer?

8 A. Yes.

9 Q. Do you know there is a chief engineer examination?

10 A. I'm sorry? I didn't hear it.

11 Q. Do you know there is an examination to become a chief
12 engineer?

13 A. Yes, I am aware of that.

14 Q. Did you research the license examination to become a
15 chief engineer?

16 A. I did not have any need to, no.

17 Q. Okay. Do you know what it entails, the examination?

18 A. The examination, I do not have an implicit knowledge of
19 the test and the questions, no.

20 Q. Do you know what the failure rate is of the examination?

21 A. I do not.

22 Q. Do you know what the length of the examination is?

23 A. I do not have any knowledge of the examination.

24 Q. Okay.

25 I think you discussed some achievement test scores

1 taken by some testing that my expert, Dr. Wollstein did?

2 A. Correct.

3 Q. Are those achievement test scores consistent with someone
4 who is able to obtain a chief engineer's license?

5 A. I don't have any knowledge of the chief engineer license
6 requirements in terms of the test, as I indicated. Those
7 scores are just very low in terms of his reading ability.

8 Mr. Hinson is a contextual learner. He learned in the context
9 of doing.

10 Q. Okay.

11 And you mentioned that Hinson obtained a GED in about
12 2009?

13 A. That's what he had indicated to me, yes.

14 Q. Okay.

15 Are the test results that you just mentioned
16 consistent with someone who was able to pass and obtain a GED?

17 A. No, they are not.

18 Q. Can an individual's motivation affect test results?

19 A. Motivation can affect almost anything in a human
20 endeavor, but test results are usually based on knowledge and
21 ability, not on motivation.

22 Q. Okay. But if a person was not trying or engaging, they
23 could perhaps have lower test results than if they were trying
24 and applying themselves during the examination, correct?

25 A. If you are saying could they deliberately not do well,

1 that's possible.

2 Q. You did not review Mr. Hinson's job duty description
3 before you reached your opinion, correct?

4 A. Correct.

5 Q. You obtained information about his job duties from the
6 Dictionary of Occupational Titles?

7 A. That's correct.

8 Q. The DOT essentially provides a generic description about
9 job duties?

10 A. Correct.

11 Q. It doesn't break up job duties for a first engineer,
12 second engineer or third engineer; doesn't delineate those
13 duties. Is that accurate?

14 A. It's accurate because the duties are essentially the same
15 and they group all engineers under one title.

16 Q. Okay.

17 And you based your opinion that Mr. Hinson would be
18 limited or precluded from certain jobs because he does not
19 have any supervisory experience. Is that correct?

20 A. Yes, for him to step into a supervisor or manager job is
21 unrealistic.

22 Q. Okay.

23 Did you speak to Mr. Hinson about his supervisory
24 experience?

25 A. Only in terms of his seaman experience as an engineer,

1 not anything else.

2 Q. Okay.

3 Did you hear his testimony yesterday about his
4 supervisory experience?

5 A. No, I was not here.

6 Q. Okay.

7 Would it affect your opinion if Mr. Hinson testified
8 that he in fact did have supervisory experience as an
9 engineer?

10 A. No, as the job title indicates that he is supervising
11 other engineers.

12 Q. Okay.

13 Have you performed any specific research, apart from
14 what you did with the DOT, about the jobs that were available
15 to maritime engineers specifically?

16 A. No, I did not.

17 Q. Do you have any experience placing maritime
18 professionals?

19 A. I have not placed a maritime professional, no.

20 Q. Is it your opinion that all marine engineering jobs
21 require a lifting -- require someone to be able to lift more
22 than ten pounds?

23 A. The generic description indicates it's up to 50 pounds.
24 It's classified as medium physical demand work.

25 Q. And without that ten-pound lifting restriction,

1 Mr. Hinson would have more jobs available to him. Is that
2 correct?

3 A. Yes, if he could lift more, there would be more jobs that
4 would match his profile. And I use medium -- I used sedentary
5 to some light work, so it wasn't just sedentary.

6 Q. Did you, as part of your analysis, research any maritime
7 trade school jobs?

8 A. No, I did not. Those are not among the most frequently
9 hired jobs, either in his labor market or nationally.

10 Q. Are you aware of the military sealift training center in
11 Freehold, New Jersey?

12 A. No. I know there is one there, but I have no personal
13 familiarity with it.

14 Q. Okay.

15 Do you know who they train or what they train?

16 A. I do not know. I don't have any information with regard
17 to their training programs.

18 Q. And that's in Freehold, New Jersey, correct?

19 A. The one he went to was not, but there is one there.

20 Q. Okay.

21 And do you know where Mr. Hinson currently resides?

22 A. He lives in Monmouth County, New Jersey in -- I am just
23 going to let you know the town here. In Freehold.

24 Q. In Freehold, New Jersey?

25 A. Yes.

1 Q. Okay.

2 Dr. Stein, do you -- do people work past the Social
3 Security age?

4 A. Some people do. I am one of them.

5 Q. Have you seen clients obtain jobs at 65 years of age?

6 A. I have had people obtain jobs at 65 and older.

7 Q. Have you had people obtain jobs at 63 years of age?

8 A. Yes.

9 Q. Have you assisted older clients to obtain work?

10 A. Yes.

11 Q. Okay.

12 A fuel attendant, that is part of the 61 jobs you
13 identified?

14 A. That was one of the occupations most frequently hired
15 that matched his residual or post-injury vocational profile.

16 Q. So Hinson has the functional capacity to perform a fuel
17 attendant job?

18 A. Yes.

19 Q. Do gas stations generally have stringent hiring
20 requirements?

21 A. Do -- I'm sorry, what hiring?

22 Q. Stringent.

23 Do gas stations have stringent hiring requirements?

24 A. Define "stringent." I mean, they do a background check
25 and they make sure the individual can perform the essential

1 functions of the job. It's an unskilled job.

2 Q. Does it require long-time training or long-term training?

3 A. No.

4 Q. Is there a high turnover rate for fuel attendants?

5 A. Yes.

6 MR. JOSEPH: I have no further questions.

7 THE COURT: Any redirect?

8 REDIRECT EXAMINATION

9 BY MR. BUCHSBAUM:

10 Q. Dr. Stein, when a vocational rehabilitation specialist
11 such as yourself conducts tests or interviews, can you tell if
12 a person is not exerting maximal effort?

13 A. You know, sometimes you can do that based on the way they
14 are taking the test and answering the results. But there was
15 no mention of that made in either Dr. Wollstein's report, and
16 I didn't pick up any kind of behavior like that in my
17 interview with Mr. Hinson.

18 Q. The majority of people that you have placed in alternate
19 employment, age 65 and older, what type of professions were
20 those?

21 A. Those are mostly skilled jobs, people who do skilled
22 professional work, people with higher level education,
23 primarily.

24 MR. BUCHSBAUM: Nothing further, Judge.

25 THE COURT: Recross?

1 educational training all along the way.

2 THE COURT: Okay, thank you. You may step down.

3 THE WITNESS: Thank you.

4 (Witness is excused.)

5 THE COURT: I presume you need a few minutes.

6 MR. BUCHSBAUM: A few minutes. Thank you, Judge.

7 THE COURT: 15? Does 15 work?

8 MR. BUCHSBAUM: Yes, Your Honor.

9 (A break is taken from 9:53 a.m. to 10:05 a.m.)

10 THE COURT: Counsel, are you ready?

11 MR. BUCHSBAUM: Yes.

12 THE COURT: You may call your witness.

13 MR. BUCHSBAUM: Plaintiff calls Kristin Kucsma to the
14 stand, please.

15 KRISTIN KUCSMA, PLAINTIFF'S WITNESS,
16 having been duly sworn, testifies as follows:

17 THE DEPUTY CLERK: State your name.

18 THE WITNESS: Kristin Kucsma.

19 THE DEPUTY CLERK: Have a seat.

20 THE WITNESS: Thank you.

21 THE COURT: You may be seated.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: Counsel.

24 MR. BUCHSBAUM: May I proceed?

25 THE COURT: Please.

1 DIRECT EXAMINATION

2 MR. BUCHSBAUM:

3 Q. Good morning, Ms. Kucsma.

4 A. Good morning.

5 Q. Can you tell us your profession?

6 A. Yes. I am an economist and I am the managing director
7 and chief economist of the Sobel Tinari Economics Group.

8 Q. And at our request, did you perform an economic
9 evaluation of Mr. Hinson?

10 A. I did, yes.

11 MR. BUCHSBAUM: Your Honor, I would tender Ms. Kucsma
12 as an economic expert in connection with Mr. Hinson's wage and
13 benefit loss.

14 MR. JOSEPH: No objection, Your Honor.

15 THE COURT: So qualified.

16 BY MR. BUCHSBAUM:

17 Q. Did you prepare an updated chart to reflect Mr. Hinson's
18 wage and benefit loss as of today, the date of your testimony?

19 A. Yes.

20 MR. BUCHSBAUM: Your Honor, I have provided it to
21 defense counsel and I would offer it as Plaintiff's
22 Exhibit 37.

23 MR. JOSEPH: No objection, Your Honor.

24 THE COURT: P-37. In evidence?

25 MR. JOSEPH: We don't have an objection.

1 THE COURT: P-37 is in evidence.

2 (Exhibit Number P-37 is received in evidence.)

3 MR. BUCHSBAUM: May I approach and have it marked,
4 Your Honor?

5 THE COURT: Please.

6 MR. BUCHSBAUM:

7 Q. All right.

8 Ms. Kucsma, just to cut to the chase, can you tell us
9 your conclusions assuming Mr. Hinson were unable to provide
10 any alternate -- obtain any alternate employment? And we have
11 it up on the screen as the last page of Exhibit 37?

12 A. Yes. I calculated the present value of the after-tax
13 economic losses in this case at between \$538,733 and \$584,606.

14 Q. Okay.

15 Now, let's try to break it down and determine how you
16 came up with those numbers.

17 Did you determine a work life expectancy for
18 Mr. Hinson?

19 A. Yes, I did.

20 Q. How did you do that, and what was it?

21 A. I considered really three sources of information. I
22 started by reviewing benchmark statistical data, data that is
23 published by the U.S. Government. And I looked very
24 specifically at the actual experience of 62, 63-year-old men
25 with a high school diploma. So I wanted to look at men like

1 Mr. Hinson.

2 In addition to that, I reviewed Dr. Stein's report.
3 And in his report I learned that Mr. Hinson had intended to
4 continue working through at least age 70.

5 I also had reviewed testimony provided by Mr. Hinson,
6 in which he stated something along the lines of he had no
7 intention to ever stop working, he'd work until he died.

8 So I combined all of that information and ultimately
9 calculated the loss of earnings in this matter through
10 Mr. Hinson's 70th birthday. That is consistent with the
11 benchmark statistical data for 62, 63-year-old men with a high
12 school diploma and also consistent with his reported
13 intentions.

14 Q. Did you also determine his statistical life expectancy?

15 A. I did, yes.

16 Q. How did you do that, and what was it?

17 A. I reviewed the national vital statistics reports, reports
18 published again by the U.S. Government through the Centers For
19 Disease Control. And again, I looked very specifically at the
20 statistical life expectancy for 62, 63-year-old males.

21 And based on my review of that data, I determined
22 that Mr. Hinson's statistical life expectancy is a total of
23 82.31 years.

24 Q. Did you also determine the number of days that Mr. Hinson
25 spent at sea on average?

1 A. I did, yes.

2 Q. And what was that? And I refer you to Page 15 of your
3 report.

4 A. Yes. I had reviewed some statements provided in
5 connection with the American Maritime Officers pension plan.
6 And specifically in those statements I reviewed, there was
7 information about the number of days per year that Mr. Hinson
8 had been at sea.

9 I took the average of the number of years per --
10 number of days per year he had been at sea from 2013
11 through 2015. And based on that I was able to determine that
12 on average Mr. Hinson spent 154 days per year, or
13 approximately 42 percent of the year at sea.

14 Q. Were you provided with Mr. Hinson's tax returns?

15 A. Yes.

16 Q. And from those tax returns were you able to determine his
17 average yearly earnings?

18 A. I was. I had been provided with tax returns as well as
19 W-2 wage and tax statements.

20 And based on my review of those documents, I was able
21 to examine what I called Mr. Hinson's earnings history. I was
22 able to -- do I do this or do you? If we look at the next
23 slide.

24 Thank you.

25 I was able to examine how much Mr. Hinson had in fact

1 been paid in each of the years from 2013 through 2016. I also
2 noted that Mr. Hinson received gross earnings, so what I will
3 call regular pay, not vacation pay, in other words.

4 He also was issued a separate W-2 wage and tax
5 statement for vacation pay.

6 And in 2014, I was able to determine by reviewing his
7 tax return that he also had received unemployment
8 compensation.

9 Those had been the three sources of income, or
10 earnings, for Mr. Hinson from 2013 through the time he was
11 injured in 2016.

12 Q. And this is set forth on Page 2 of exhibit -- Plaintiff's
13 Exhibit 37, correct?

14 A. Yes.

15 Q. Were you also provided with records from Mr. Hinson's
16 union, the American Maritime Officers union?

17 A. Yes.

18 Q. Was Mr. Hinson entitled to certain benefits from the
19 American Maritime Officers union?

20 A. He was. I learned from reviewing documents from the
21 union that Mr. Hinson was entitled to various fringe benefits
22 that included health insurance as well as retirement benefits.
23 Specifically, I considered the money purchase benefit that was
24 described in the summary plan description provided by the
25 union. And that is essentially what we call a defined

1 contribution pension plan, similar to a 401(k) plan. There
2 would be contributions put into that plan that would then had
3 been available to Mr. Hinson once he retired.

4 Q. Just to go back, you came up with a projected earnings
5 base of what?

6 A. I had three projected earnings bases. First, I needed to
7 consider, on average, how much money Mr. Hinson would have
8 continued to earn in what I will call regular earnings, not
9 including vacation pay. I determined that, on average,
10 Mr. Hinson would have continued to earn \$53,814 per year going
11 forward, and that simply is based on the average of what he in
12 fact received from 2013 through 2015.

13 I also determined that Mr. Hinson would have
14 continued to receive vacation pay. I determined he would have
15 received, on average, \$27,419 per year in vacation pay, again,
16 based on an average of the vacation pay he had in fact
17 received from 2013 through 2015.

18 And lastly, I determined that Mr. Hinson would have
19 continued to receive, on average, \$4,683 per year in
20 unemployment compensation, again, based on the average of what
21 he had received in the years 2013, 2014, 2015.

22 Q. Okay.

23 And what is the next step you performed in your
24 analysis?

25 A. The next step was for me to make several adjustments to

1 the gross earnings figures that appear on Page 2, or I should
2 say the projected earnings figures.

3 Q. How did you do that, and what were the results?

4 A. The first thing I needed to do was take into account the
5 fact that if Mr. Hinson had continued working, his earnings
6 would have continued to increase year over year. And I was
7 able to determine that by examining information provided to me
8 in the equivalent of a collective bargaining agreement.

9 Based on my review of that collective bargaining
10 agreement, specifically the name of that document was a
11 memorandum of understanding for the American Maritime
12 Officers, Appendix A in there provided me with wage
13 information that allowed me to determine on average how much
14 the wages would have increased each year in 2017, '18, and
15 '19. So I had to take that into account that if Mr. Hinson
16 had continued working, his earnings, his vacation pay would
17 have continued to increase year over year.

18 Q. And what was that projected yearly increase?

19 A. For 2017, I calculated the yearly increase at
20 2.5 percent. 2018, I calculated the yearly increase at
21 2 percent. And for 2019, I calculated the yearly increase at
22 2.5 percent.

23 Q. And what was the next step?

24 A. Once I had calculated the gross earnings figures, I had
25 to make three downward adjustments and one upward adjustment

1 to the earnings.

2 The first adjustment that I made to all three sources
3 of income, earnings, vacation pay and unemployment
4 compensation, was an adjustment for what we call work life
5 expectancy. I had to take into account the probability that
6 in any given year Mr. Hinson may not have worked completely
7 full time throughout the year, but he may have missed work now
8 and then. He may have gotten the flu. He may have sprained
9 an ankle. He may have missed work. If he missed work, I
10 assumed he would not have received compensation during that
11 time. So the first thing I did was make a downward adjustment
12 each and every year in the amount of 6.4 percent. And I
13 determined the magnitude of that adjustment, again, by looking
14 at U.S. Government data and looking at the actual experience
15 of 62, 63-year-old males with a high school diploma. I was
16 able to determine that, on average, they spend 93.6 percent of
17 the time working until they retire, or alternatively, they
18 will spend about 6.4 percent of the time not working.

19 I then made a second downward adjustment in each and
20 every year, again, to all three sources of income and that was
21 to account for the taxes that Mr. Hinson would have continued
22 to pay on his earnings and income if he had continued to work.

23 I was able to determine the effective tax rate at
24 both the federal and state levels by considering two sources.
25 I started by reviewing Mr. Hinson's tax returns and then I

1 also considered the most up-to-date information available by
2 reviewing tax rate schedules published at the federal level by
3 the IRS and at the state level, of course, by the State of New
4 Jersey.

5 The last downward adjustment I made to his earnings,
6 not his vacation pay and not his unemployment compensation,
7 was a downward adjustment to account for job maintenance
8 expenses. So any money that Mr. Hinson would have spent from
9 his earnings for job-related expenses. If he had spent any
10 money on transportation to and from the ship, for example, if
11 he had spent any money on food that was not provided to him,
12 that would be reflected in a 3 percent downward adjustment I
13 made to his earnings. And that 3 percent was based on, again,
14 U.S. Government data specifically. My review of the consumer
15 expenditure survey.

16 I did make one upward adjustment only to my
17 calculation of his earnings and that was to reflect the
18 retirement benefit that I described before. And very
19 specifically, I was able to estimate the value of that
20 retirement benefit by examining the summary plan description
21 that I mentioned earlier and also considering benchmark
22 statistical data published by the U.S. Department of Labor.

23 And based on my review of those sources I was able to
24 determine that, on average, Mr. Hinson would have received
25 employer contributions into the money purchase benefit plan in

1 the amount of 3.3 percent of his earnings. And those
2 contributions would have been made based only on his earnings,
3 not on his vacation pay, and obviously not on his unemployment
4 compensation.

5 Q. And these calculations and adjustments are referenced on
6 Page 3 of Plaintiff's Exhibit 37?

7 A. Yes.

8 Q. What was the next step in your analysis?

9 A. The next step was to simply combine all of the
10 information that I just described. I started by considering
11 what I have called the adjusted earnings in past years.

12 I started by calculating how much money Mr. Hinson
13 would have received in earnings, again, not vacation pay, not
14 unemployment compensation, from the time he was injured in
15 2016 through the present time if he had not been injured and
16 if he had been able to continue working.

17 I started in Column 3, by simply calculating the
18 gross earnings, determining what Mr. Hinson's earnings would
19 have been without accounting for periods of missed work,
20 taxes, and so on.

21 In Column 4, I then made the three downward
22 adjustments I described and added 3.3 percent to reflect the
23 contributions into the retirement plan.

24 In the year 2016, of course, Mr. Hinson had worked
25 for part of the year, he had received earnings, so I needed to

1 subtract those when I calculated my losses.

2 And then in each of the years, from 2016 through the
3 present time, through roughly November of 2019, I was able to
4 calculate how much money Mr. Hinson would have earned if he
5 had continued working.

6 And based on my analysis then I determined that if
7 Mr. Hinson had continued working through the present time, he
8 would have received an additional \$125,453 in earnings.

9 Q. And that's through today?

10 A. Correct.

11 Q. Net of taxes?

12 A. Correct. That's after taxes, taking into account periods
13 of missed work, job-related expenses, and including those
14 retirement benefits.

15 Q. And then you did some calculations regarding his vacation
16 pay, correct?

17 A. Correct. I performed essentially the same calculation
18 for vacation pay.

19 Again, starting in 2016, I calculated how much
20 vacation pay Mr. Hinson would have earned through the present
21 time if he had not been injured, had he continued working. He
22 did receive some vacation pay that was paid in 2017, so I have
23 to subtract that out from my analysis.

24 I made the adjustments that I mentioned earlier,
25 downward adjustments for periods of missed work and taxes.

1 And I was then able to determine that if Mr. Hinson had
2 continued working through the present time, he would have
3 received an additional \$83,527 in vacation pay.

4 Q. And both of these tables on Page 4 of Plaintiff's
5 Exhibit 37 are what we call past damages through today?

6 A. Correct.

7 Q. From the date of accident through today?

8 A. Correct.

9 Q. And you assumed that the last day of Mr. Hinson's
10 employment was July 6th of 2016, correct?

11 A. That's correct.

12 Q. All right.

13 Then you made some calculations regarding his receipt
14 of unemployment compensation, correct?

15 A. That's correct.

16 Q. And let me just back up.

17 The calculations for earnings and vacation pay are on
18 Page 4 of Plaintiff's Exhibit 37?

19 A. Yes.

20 Q. All right.

21 Unemployment is Page 5 of Plaintiff's Exhibit 37.

22 And tell us how you came to that conclusion.

23 A. I performed essentially the same analysis again. I
24 determined, on average, how much unemployment compensation
25 Mr. Hinson would have received each year, from 2016 through

1 the present time, made the downward adjustments, including one
2 for taxes. And I was then able to determine that if
3 Mr. Hinson had continued working, he would have received an
4 additional \$14,576 in unemployment benefits through the
5 present time.

6 Q. And you came up with a total earnings lost and benefits
7 from the date of his last work through today of what?

8 A. \$223,556.

9 Q. Taking out taxes?

10 A. Correct. This is, again, after taxes. Takes into
11 account the probability of periods of missed work. Takes into
12 account job-related expenses and does include those retirement
13 benefits.

14 Q. And let's go to future, which starts on Page 6 of
15 Plaintiff's Exhibit 37.

16 Tell us what you did, please.

17 A. I simply continued the analysis that I have already
18 described into future years, which means in this case I
19 started my calculations as of today's date and continued them
20 through October 12, 2023. And that represents the point at
21 which Mr. Hinson will turn age 70.

22 So I performed the same calculations each year
23 through Mr. Hinson's 70th birthday.

24 I started, once again, by calculating the gross
25 earnings in Column 3 that Mr. Hinson would have received if he

1 had been able to continue working from today's date through
2 his 70th birthday.

3 I had to take into account the fact that those
4 earnings would have continued to increase going forward.

5 In order for me to determine, on average, how much
6 his earnings would have increased going forward into future
7 years, I considered two sources of information. I looked back
8 historically at how much wages had in fact increased in the
9 past. I also took into account projections of future wage
10 growth that reflect, of course, current economic conditions.

11 And based on my review of those two sources, I
12 determined that, on average, Mr. Hinson's earnings would have
13 increased 3.2 percent a year.

14 I then made the three downward adjustments that I
15 described earlier, added 3.3 percent for the retirement
16 benefits.

17 The one thing that I now have to introduce when I
18 calculate losses in future years that I do not have to do when
19 I calculate losses in past years is I need to reduce all of my
20 loss figures in future years to present value.

21 Q. That is called discounting?

22 A. Correct.

23 Q. And what discount rate did you use?

24 A. When I calculated the loss of earnings, vacation pay and
25 unemployment compensation, I used a discount rate or an

1 interest rate of 2.5 percent.

2 Q. How did you come up with that rate?

3 A. I started by examining yields on safe fixed income
4 securities. Specifically, I looked at yields on U.S. Treasury
5 securities as well as high grade municipal bonds. And I
6 started by looking at what we call current spot rates, looking
7 at what the interest rates on these types of securities are
8 right now.

9 Q. What are they right now?

10 A. Well, in this case I needed to look at short-term
11 securities. I looked at five-year securities for these
12 purposes. At the present time the yields or interest rates on
13 five-year securities are below 2 percent, roughly about 1.5,
14 1.6 percent.

15 I did take into account, though, the fact that if I
16 look back historically, many years at this point, but if I go
17 back about ten plus years, interest rates of course were
18 higher. They tend to rise and fall over time.

19 In addition to that, I did take into account the fact
20 that there has been some discussion by the Board of Governors
21 of the Federal Reserve System of pushing their target interest
22 rate up in the future.

23 So based on that, rather than use the current spot
24 rate of about 1.5 or 1.6 percent, I felt it was more
25 appropriate to use an interest rate or a discount rate of

1 2.5 percent.

2 Q. Did you consider inflation?

3 A. I did. The inflation is what I described before. The
4 inflation came into play when I had to determine, on average,
5 how much Mr. Hinson's earnings would have increased each year
6 going forward. That reflects, among other things, cost of
7 living adjustments or inflation.

8 Q. And you came to a conclusion regarding his adjusted
9 earnings in future years of what?

10 A. I did. I calculated the present value of the adjusted
11 earnings in future years at \$183,738.

12 Q. And did you do a similar calculation for vacation pay
13 future years?

14 A. I did. I performed a similar calculation, again, with
15 all of the adjustments, discounting to present value. And I
16 calculated the present value of the adjusted vacation pay in
17 future years, from the present time through Mr. Hinson's 70th
18 birthday, at \$92,674.

19 Q. And you did a calculation for his unemployment
20 compensation future years?

21 A. I did.

22 Again, I really continued the analysis I described
23 before; after taxes, discounting to present value. And I
24 calculated the present value of the unemployment compensation
25 in future years at \$15,829.

1 Q. And you came up with a recap of his total earnings loss
2 and benefits in future years of what?

3 A. I calculated the total present value after taxes of
4 earnings and benefits in future years at \$292,241.

5 Q. Okay. And then you did some calculations and analysis of
6 loss of household services.

7 Please explain how you did that and what the results
8 were.

9 A. In this case, I learned from reviewing testimony of
10 Mr. Hinson's that there were various household services that
11 he had been performing prior to his injury that he is either
12 not able to perform at all any longer or is able to perform
13 but has difficulty. It perhaps takes him longer. Some things
14 go undone and so on.

15 In order to calculate the monetary value of the
16 impact that these injuries have had on Mr. Hinson's ability to
17 perform household services, I used what is the generally-
18 accepted method among economists as well as the U.S.
19 Government for calculating the value of these types of
20 services.

21 These are services that are typically provided by
22 family members, by individuals free of charge. Husbands don't
23 typically charge their wives when they do these services and
24 vice versa.

25 But the U.S. Government, National Alzheimer's

1 Association, the United Nations and the discipline of
2 economics in general has long recognized that these services
3 have monetary value.

4 The method that is used to calculate the monetary
5 value of these services is relatively simple.

6 The first thing that economists, and I had to do this
7 in this case, was simply determine whether or not Mr. Hinson
8 had been performing household services, if these injuries had
9 had an impact on his ability to perform those household
10 services. I am not a vocational expert. I'm not the trier of
11 fact, of course, so I did rely on testimony by Mr. Hinson in
12 that regard.

13 In addition to that, though, I did consider benchmark
14 statistical data. So once Mr. Hinson described some of the
15 household chores he had been performing, I then also
16 considered benchmark statistical data published by the
17 American Time Use Survey. And I was able to look very
18 specifically at data about the average number of hours that a
19 married man who works full time spends on household services.
20 I was able to derive that through the American Time Use
21 Survey.

22 I did have to take into account, though, the fact
23 that the benchmark statistical data that I reviewed is for all
24 married males who are working full time. I wanted to make
25 sure I accounted for the fact that Mr. Hinson spent a good

1 proportion of the year at sea and therefore was not home
2 performing these household chores.

3 So I took the benchmark statistical data and I
4 reduced it by 42 percent.

5 And again, that was to take into account the fact
6 that based on my review of documents provided by the American
7 Maritime Officers information that Mr. Hinson had spent
8 154 days, on average, each year at sea.

9 In other words, he spent about 42 percent of the year
10 at sea. Therefore, he was not home and was not able to
11 perform household services during that time.

12 So once I had considered the benchmark statistical
13 data, reduced it by 42 percent, I was then able to determine
14 that, on average, if Mr. Hinson had not been injured, he would
15 have spent 8.02 hours per week performing household services
16 until he turned 65.

17 At the age of 65, I reduced the number of hours that
18 Mr. Hinson would have spent performing household services,
19 based on U.S. Government data, and I arrived at 7.42 hours per
20 week.

21 Once Mr. Hinson retired and of course was home now
22 52 weeks out of the year, was no longer at sea, I removed that
23 42 percent adjustment that I had made earlier. He was home
24 year round. I assumed that he would have performed household
25 chores for the entirety of the year, which is why those hours

1 increase in this case once Mr. Hinson was retired at or around
2 the age of 70.

3 And so what you see here is simply the number of
4 hours on average per week that Mr. Hinson would have spent
5 performing household services, the number of hours per year,
6 of course, weekly hours times 52, and then just the time
7 periods I just described.

8 Now, once I had identified the types of services that
9 Mr. Hinson had been performing, the number of hours each year
10 he would have spent on those household services -- if you go
11 back up for one second.

12 In order to calculate the monetary value of those
13 services objectively, I then simply looked out into the market
14 and I determined on average what you would pay a stranger in
15 the marketplace to perform various household services; in and
16 around the house, in and around the yard and so on.

17 So I reviewed, for example, household -- or the
18 hourly rates for housekeepers, landscapers and so on.

19 And I determined, for example, in the year 2016,
20 based on data published through the U.S. Department of Labor
21 and other surveys, that you would pay \$20.39 per hour in New
22 Jersey to retain the services of individuals in the
23 marketplace to perform routine maintenance around the home,
24 yard work, household chores and so on.

25 And then, of course, those hourly rates have in fact

1 increased year over year through the present time.

2 In order then to calculate the monetary value of the
3 household services that Mr. Hinson had been performing and
4 providing around the house, if we look at 2017, for example,
5 the first full year after he was injured, based on my research
6 I determined Mr. Hinson would have spent 417 hours that year
7 on household services. 417 hours per year at \$20.74 per hour
8 gives us a monetary value of those services in the amount of
9 \$8,651.

10 And then I performed that calculation each year
11 through the present time.

12 Q. And what was the total?

13 A. I calculated the monetary value of the household services
14 that Mr. Hinson would have continued to perform through the
15 present time at \$28,489.

16 Q. And this is referenced at Page 9 of Plaintiff's
17 Exhibit 37?

18 A. Yes.

19 Q. And then you did similar calculations for the future?

20 A. Correct. I then continued my calculations into the
21 future through Mr. Hinson's statistical life expectancy. So I
22 determined that he would have continued to perform household
23 services from today's date through his statistical life
24 expectancy, February 4, 2036.

25 Once again, I took the average number of hours per

1 year, multiplied it by the hourly rate. In this case I had to
2 take into account the fact the hourly rates would continue to
3 increase going forward. I once again considered historical
4 data about how those rates have increased in the past and I
5 also considered projections of how prices, costs and wages are
6 going to continue to increase going forward.

7 I reduced all the figures to present value -- if you
8 go up a teeny bit. Go back up to -- yup.

9 You will see here I did use a higher discount rate or
10 higher interest rate. Rather than using an interest rate of
11 2.5 percent, as I used when I reduced the lost earnings to
12 present value, I used an interest rate or discount rate in
13 this case of 3.5 percent.

14 That's because when I calculated the loss of
15 household services in future years, I was no longer looking at
16 a period of just four or five future years, but I was now
17 calculating the loss of household services over a period of
18 about 15 years.

19 If I look, for example, at the yields on 30-year U.S.
20 Treasury securities and municipal bonds, I do find that they
21 are about two and a quarter percent. So they are higher than
22 the yields on five-year bonds, which is why it was appropriate
23 for me to use a higher discount rate when looking at a longer
24 period of time for calculating future losses.

25 Q. What was the total?

1 A. I calculated the total present value of the household
2 services Mr. Hinson would have continued to perform going
3 forward at \$200,872.

4 Q. And I want you to assume that Mr. Hinson testified
5 yesterday he is limited in his right arm to lifting ten pounds
6 and is unable to perform and help around the house like he
7 used to before he was injured.

8 Are these the type of services that you consider in a
9 loss of the household service?

10 A. Yes.

11 Q. What was the next step? That looks like it's on Page 11
12 of Plaintiff's Exhibit 37.

13 A. What we see here is a framework that I have provided for
14 the trier of fact to use to ultimately determine the precise
15 loss of household services, to determine precisely in monetary
16 terms how these injuries have impacted Mr. Hinson's ability to
17 perform household services.

18 The figures you see in the left-hand column are the
19 figures I calculated in the preceding tables. \$28,489 in past
20 years and \$200,872 in future years.

21 Those figures represent what the loss of household
22 services would be if Mr. Hinson were completely incapable of
23 doing anything around the house any longer.

24 Based on the information I reviewed -- and again, I
25 am not a vocational expert and not the trier of fact, but

1 based on the information I reviewed, I selected, for
2 illustrative purposes, a range of loss of between 10 and
3 30 percent.

4 So, in other words, if Mr. Hinson were capable of
5 still doing 90 percent of what he could do before he was
6 injured, he would be entitled to a 10 percent loss of
7 household services. And I calculated that loss simply by
8 taking the figures in the far left column and multiplying them
9 by 10 percent or .1 percent -- or .1.

10 If, on the other hand, Mr. Hinson can do about
11 80 percent of what he was able to do before he was injured, he
12 would be entitled to a 20 percent loss of household services.
13 I calculated that loss, again, by taking the figures in the
14 far left hand column, multiplying them by 20 percent or .2.

15 And then lastly, again, for illustrative purposes, if
16 Mr. Hinson can do only about 70 percent of what he could do
17 before he was injured, he would be entitled to a 30 percent
18 loss. I took the figures in the far left-hand column,
19 multiplied them by 30 percent or .3.

20 And this framework certainly could be adjusted to
21 account for a 32 percent loss of household services, a
22 74 percent loss, an 8 percent loss, by again, simply taking
23 the figures in the far left-hand column and multiplying them
24 by the appropriate percent loss of household services.

25 Q. And on the last page, the summary, the 10 percent,

1 20 percent and 30 percent is limited to the household
2 service --

3 A. Correct.

4 Q. -- calculation?

5 A. Correct.

6 Q. Okay.

7 Now, you relied on Dr. Stein's report to calculate
8 wage and benefit loss based on Mr. Hinson not being able to
9 obtain alternate employment, correct?

10 A. Correct.

11 Q. In order to do a calculation on Mr. Hinson's loss based
12 on him finding alternate employment, the first thing you would
13 have to determine is when he would be able to find that
14 alternate employment. Is that fair?

15 A. Correct.

16 MR. BUCHSBAUM: I have nothing further.

17 Thank you, Your Honor.

18 THE COURT: Any cross?

19 MR. JOSEPH: Just a couple questions.

20 CROSS-EXAMINATION

21 BY MR. JOSEPH:

22 Q. Ms. Kucsma, is that the correct pronunciation?

23 A. Yes. Thank you.

24 Q. Your opinion today assumes that Mr. Hinson would never
25 return to work. Is that accurate?

1 A. These calculations, yes, are based on Mr. Hinson not
2 finding any gainful employment in future years.

3 Q. Okay.

4 And that opinion rests entirely on the opinion of
5 Dr. Stein who testified earlier today. Is that correct?

6 A. Yes. I based that on my review of his report, yes.

7 Q. Okay.

8 MR. JOSEPH: I have no further questions.

9 THE COURT: Redirect?

10 MR. BUCHSBAUM: Nothing, Your Honor.

11 THE COURT: Okay. You may step down.

12 (Witness excused.)

13 THE COURT: Anything further?

14 MR. BROWN: Your Honor, I don't know if the plaintiff
15 has anything further. The Court did ask us to address the
16 issue of whether or not exhibit -- Plaintiff's Exhibit 3
17 should be admitted, and I am ready to address that now if now
18 is a good time for the Court and for plaintiff's counsel.

19 MR. BUCHSBAUM: I am not ready.

20 THE COURT: I was going to give you some time. I
21 apologize if I made you work while the trial was going on.

22 MR. BUCHSBAUM: Plaintiff rests, Your Honor.

23 THE COURT: Okay.

24 Are you going to make your motion?

25 MR. BROWN: Yes, Your Honor.

1 THE COURT: Okay. Go ahead and make your motion.

2 MR. BROWN: Your Honor, Rule 52C allows the Court in
3 a nonjury trial to enter judgment against a party on an issue
4 after that party has been fully heard on the issue.

5 Plaintiff has now been fully heard on the allegation
6 of negligence and the unseaworthiness of Denebola.

7 Because it has not been established by a
8 preponderance of the evidence, any duty breached by the United
9 States as owner of Denebola, and it has not been established
10 that any unseaworthy condition on that ship existed, judgment
11 should be entered against the plaintiff.

12 Your Honor, I am prepared to argue this motion in
13 full at present. If the Court is not inclined to hear the
14 argument at this time in full, we would request the
15 opportunity to brief the issue after receipt of the trial
16 transcripts. But I would like to proceed now, if that's okay.

17 THE COURT: I am going to reserve. Why don't you
18 brief it in full --

19 MR. BROWN: Thank you, Your Honor.

20 THE COURT: -- once you get the transcripts.

21 MR. BROWN: Thank you, Your Honor.

22 THE COURT: I assume you don't want to be heard at
23 this point?

24 MR. BUCHSBAUM: No, Your Honor, not at this time.

25 THE COURT: Anything further?

1 MR. BUCHSBAUM: Not from the plaintiff.

2 THE COURT: Okay. When do we pick up again?

3 MR. JOSEPH: I believe it's January 27th.

4 THE COURT: You know what, just hold one second. I
5 want to get my other book.

6 January 27th.

7 MR. JOSEPH: I believe it is, yes, January 27th and
8 28, 2020.

9 THE COURT: How many days do you think you are going
10 to need?

11 MR. JOSEPH: Day and a half to two.

12 THE COURT: Okay. Anything further?

13 MR. BUCHSBAUM: Nothing, Your Honor.

14 MR. JOSEPH: Nothing further from the United States.

15 THE COURT: That being said, who -- aside from
16 Mr. Hinson, who has served our country?

17 MR. BROWN: In the military, sir?

18 THE COURT: Yes.

19 MR. BROWN: Yes, sir.

20 THE COURT: What branch?

21 MR. BROWN: United States Navy, sir.

22 THE COURT: And what was your rank?

23 MR. BROWN: I am a commander in the reserves at
24 present.

25 THE COURT: Oh. Thank you for your service.

1 Thank you for your service.

2 I kind of had a feeling about you when you referred
3 to something as Echo. Thank you for your service, much
4 appreciated.

5 MR. BROWN: Thank you, Your Honor.

6 THE COURT: That being said, at least to our two
7 veterans, you are not a veteran yet, those who served have a
8 good Veterans Day, and again, thank you for the service.

9 As we approach the holidays, hopefully you have some
10 quality time with friends and family as you celebrate whatever
11 holiday that you do celebrate. Enjoy the holidays. Take some
12 time off, you certainly need it. I remember what it was like
13 being a lawyer.

14 And have a Happy New Year, prosperous New Year, and
15 we will see you in January.

16 If you need anything before that, please let me know.

17 Also, please, if you think there's a possibility of
18 resolving the case, let me know and we can schedule something
19 with the magistrate judge, Judge Goodman. She is very good.
20 And there is certainly some time now between now and the close
21 of the trial.

22 So please feel free, and I will be happy to arrange
23 that for you.

24 Anything further from plaintiff?

25 MR. BUCHSBAUM: Nothing, Your Honor.

1 THE COURT: Defense?

2 MR. JOSEPH: Nothing from the United States.

3 THE COURT: Okay. Again, thank you. Great job all
4 the way around. Enjoy the rest of the day and safe travels.

5 MR. BUCHSBAUM: Thank you, Your Honor.

6 MR. JOSEPH: Thank you, Your Honor.

7 MR. BROWN: Thank you, Your Honor.

8 THE COURT: Off the record.

9 (The proceeding is adjourned at 10:48 a.m.)

10

11 FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE

12

13 - - - - -

14

15 I certify that the foregoing is a correct transcript
16 from the record of proceedings in the above-entitled matter.

17

18 /S/ Joanne Sekella, CCR, CRCR, RMR

October 31, 2019

19 Official Court Reporter

Date

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